

**KENTUCKY PERSONNEL BOARD
MINUTES OF NOVEMBER 9, 2007**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on November 9, 2007, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman
Christine J. Goodmann, Vice-Chairman
Betty Gibson, Member
Lisa T. Hendricks, Member
Jackson M. Andrews, Member
Robert B. Frazer, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board personnel not present:

Rosemary F. Center, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD OCTOBER 12
AND SPECIAL MEETING HELD NOVEMBER 2, 2007**

The minutes of the last Board meeting had been circulated among the members previously. Chairman Higgins asked for additions or corrections. Ms. Gibson moved to approve the minutes as submitted, Mr. Andrews seconded, and the motion carried 5-0 (Chairman Higgins does not vote unless noted). The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek advised the Board that Mr. Crocker was sworn in as Special Assistant Attorney General, in conjunction with the Lowell Workman appeal filed in the Franklin Circuit Court.

Mr. Sipek stated that the Personnel Board staff is considering a move to 1 Fountain Place (formerly occupied by Lena's Card Shop). The space became available after another agency declined. Everything associated with the Personnel Board will be in one area, which will save resources, i.e., monthly rent.

Mr. Sipek informed the members that they have been provided with copies of Franklin Circuit Court opinions and orders. He stated he would not go into detail, unless someone had a question.

Mr. Sipek informed the members that they were provided copies of follow-up legislation, which would be discussed at the end of the meeting. He advised that the Personnel Board staff worked diligently to get all the information together.

At the conclusion of Mr. Sipek's report, Chairman Higgins asked if there were any questions. With no questions presented, he asked Secretary Crall for the Personnel Cabinet's report.

4. PERSONNEL CABINET'S REPORT

Secretary Brian Crall and Mr. Tom Stephens were present for the Personnel Cabinet and reported the following:

Secretary Crall advised the Board members that this would be his last official meeting as the Personnel Cabinet's Secretary. He thanked the Board members for their courtesy and the respect given him. He especially wanted to thank Vice-Chair Goodmann for helping him resolve an employee issue he had inherited when he became Secretary. He also thanked the Board for their work on regulations, particularly those regarding the mediation program and multilingual supplemental pay. He advised that he will leave the written reprimand regulation for the Board to promulgate and will inform Mr. Charles Wells of the Kentucky Association of State Employees (KASE). Secretary Crall advised that Dr. Penny Armstrong was available to answer questions pertaining to the regulation on the Educational Assistance Program (101 KAR 2:220).

Mr. Stephens advised that there was one request to change a probationary period for a classification that is on inactive status. He stated there are currently 683 inactive classifications, which means that there were four or less requests for registers in the last two years for these jobs, that were either never going to be filled or have a small chance of being filled. However, the biggest change in state hiring in the last thirty years will go into effect November 26, 2007. Once the Career Opportunities system goes on-line it will change everything. People will actually apply for specific positions and there will no longer be any inactive registers. Mr. Stephens advised that today (November 9) is the last day to request a register in the old format.

Chairman Higgins asked when the first appointments would be made under the new system. Mr. Stephens responded by stating that the first postings will go out November 26, 2007, and he handed out literature, which was part of the Personnel Cabinet's advertising campaign. He further stated that letters will be going out to every person currently on a register, posters will be provided to the agencies to display, and there will be outreach educational programs, especially in the Frankfort area.

Secretary Crall added that as they transition to Career Opportunities, the Personnel Cabinet expects to have issues and that they will need to address employee concerns. He also stated that he appreciated everyone that worked on the KHRIS project.

Mr. Stephens advised that the Department of Public Advocacy (DPA) wants to go to “quick fills” as it pertains to Staff Attorney I, II, and III positions. An average caseload is about 485 cases per attorney and DPA has a difficult time finding appropriate candidates, particularly in rural areas. The Personnel Cabinet has looked into doing this, but felt that this was not the appropriate time with career opportunities going on-line, but hope to address DPA’s concerns in the future.

The last item Secretary Crall had to discuss was investigations, some of which had been resolved. He advised there was no final resolution to the Bates hiring, but that they were wrapping-up the merit hiring practices investigation from previous administrations. He stated that they have a significant body of evidence and hope to submit a written report by the end of November.

Upon conclusion of Secretary Crall’s report, Chairman Higgins thanked him for his cooperation with the Board and congratulated him on the new Career Opportunities System.

Chairman Higgins invited Dr. Penny Armstrong, Executive Director of Governmental Services Center (GSC), to come forward to answer questions from the Board. Mr. Frazer asked if Kentucky State University (KSU) is the primary provider of GSC services, how does that affect someone in state government who wants to attend another educational system. Dr. Armstrong stated that there is a policy [Exceptions in the Public Interest], that if it is not geographically possible to attend KSU, or if the same degree program is offered in another area of the state, closer to the employee’s workplace, the employee can request an exception. Mr. Frazer asked if it was difficult to request exceptions. Dr. Armstrong responded that it was not difficult and that a form (P33) was available on-line, which can be submitted to GSC. Typically, GSC responds within 48 hours if the college is a public entity, otherwise GSC needs more time to see if the entity is accredited.

Chairman Higgins asked what if KSU offers an on-line class, but an employee (for instance, located in Western Kentucky) wants to take the course in a classroom, is that within the parameters of an exception. Dr. Armstrong responded that such a request would be within the public interest and that if the employee can offer a compelling reason, they could submit a request and it would be considered.

Chairman Higgins asked what scenario would constitute good cause for an exception. Dr. Armstrong stated that the majority of requests are for courses KSU does not offer. Another typical request is from employees wanting to take courses exceeding the maximum course limit.

Chairman Higgins asked the Board members if there were any other questions for Dr. Armstrong. With no further questions, Chairman Higgins thanked Dr. Armstrong for appearing.

Chairman Higgins asked if anyone else in the room would like to respond to Secretary Crall's report. The Hon. Rob Jones from the Attorney General's office wanted to know which agency is handling the Treasury investigation. Chairman Higgins said he would notify Mr. Jones if the Board was handling the investigation. Mr. Tom Stephens stated that the Personnel Cabinet would also copy Mr. Jones with everything that was provided to the Board.

The Hon. David Hale, outside counsel for the Treasurer's office, approached the Board. He stated he was also confused as to which entity would be handling the investigation. He stated that the Treasurer's office was under the impression that the Board would be handling the investigation because at the October Board meeting Mr. Andrews had invoked the subsection for referral. Chairman Higgins said the Board had wanted to wait until the Treasurer's office had a chance to respond to the allegations. Chairman Higgins further stated that it was his understanding that there were informal talks going on and the Board does not have any involvement in that.

5. **PETITIONED POSITION(S) - None**

6. **ORAL ARGUMENTS**

A. Russell Bingham v. Transportation Cabinet (on remand)

Present were the Hon. Bob Bullock, counsel for the Appellant, who had requested oral arguments; and the Hon. Ed Logan, counsel for the Appellee. The parties answered questions from the Board.

B. James Carreer v. Cabinet for Health and Family Services

Present were Mr. James Carreer, *pro se*, who had requested oral arguments; and the Hon. Amber Arnett, counsel for the Appellee. The parties answered questions from the Board.

C. Glennes Drennan v. Cabinet for Health and Family Services

Present were the Hon. Amber Arnett, counsel for the Appellee, who had requested oral arguments; and the Hon. Steve Underwood, counsel for the Appellant. The parties answered questions from the Board.

D. Jennifer Gregory, Kelvin Elliott and Michael Kemper v. Cabinet for Health and Family Services (3 appeals)

Present were the Hon. Amber Arnett, counsel for the Appellee, who had requested oral arguments; and the Hon. Scott Foster, counsel for the Appellants. The parties answered questions from the Board.

E. Rick Quarles v. Transportation Cabinet

Present were the Hon. Ed Logan, counsel for the Appellee, who had requested oral arguments; and the Hon. Willie Peale, counsel for the Appellant. The parties answered questions from the Board.

7. INVESTIGATIONS

A. Powell County Investigation Supplemental Report and Recommendation
--Response from Ann Aukerman

Present were the Hon. Mona Womack, counsel for Health and Family Services; J.P. Hamm, Appointing Authority; and Mr. Paul Herberg. Ms. Womack stated that although they had nothing to add, they were available to answer questions from the Board.

Mr. Andrews moved to accept the investigation as supplemented. Chairman Higgins seconded and the motion carried 6-0.

8. CLOSED SESSION

Ms. Gibson moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Mr. Andrews seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (12:00 p.m.)

Mr. Frazer moved to return to open session, Mr. Andrews seconded, and the motion carried 5-0. (1:26 p.m.)

9. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Russell Bingham v. Transportation Cabinet (on remand)

Mr. Frazer moved to defer this matter to the next meeting of the Board. Ms. Gibson seconded and the motion carried 5-0.

B. James Carreer v. Cabinet for Health and Family Services

Mr. Frazer moved to **OVERRULE** Appellant's Request for Disqualification of the Hearing Officer. Mr. Andrews seconded and the motion carried 5-0.

Mr. Frazer moved to note Appellant's exceptions, Appellee's response and oral arguments and to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

C. Glennes Drennan v. Cabinet for Health and Family Services

Mr. Andrews moved to note Appellee's exceptions, Appellant's exceptions, and oral arguments and to accept the Final Order as altered and attached to these minutes sustaining Appellant's appeal rescinding the ten-day suspension. Ms. Gibson seconded and the motion carried 5-0.

D. Jennifer Gregory, Kelvin Elliott and Michael Kemper v. Cabinet for Health and Family Services (3 appeals)

Mr. Frazer moved to defer this matter to the next meeting of the Board. Mr. Andrews seconded and the motion carried 5-0.

E. Rick Quarles v. Transportation Cabinet

Mr. Frazer moved to defer this matter to the next meeting of the Board. Ms. Hendricks seconded and the motion carried 3-0, with Ms. Gibson and Ms. Goodmann abstaining.

F. Christy Bittel v. Kentucky Higher Education Student Loan Corporation

Ms. Goodmann moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

G. Crystal Jarrell v. Cabinet for Health and Family Services

Ms. Gibson moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

H. Lisa Jones v. Department of Veterans Affairs

Ms. Gibson moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had show cause orders entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

- I. Allison Bowman v. Personnel Cabinet
- J. Kay Brown v. Personnel Cabinet
- K. Christopher Padelford v. Personnel Cabinet

Ms. Goodmann moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Ms. Gibson seconded and the motion carried 5-0.

10. **WITHDRAWALS**

Ms. Gibson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Hendricks seconded and the motion carried 5-0.

- A. Johnny Bright v. Transportation Cabinet
- B. William Caldwell, IV v. Personnel Cabinet
- C. Mary Ann Eaglin v. Justice and Public Safety Cabinet
- D. Revel Lewis III v. Personnel Cabinet
- E. Michael McGuire v. Transportation Cabinet
- F. Alisha Moore v. Personnel Cabinet
- G. Chad Sizemore v. Health and Family Services
- H. Glenette Thrasher v. Personnel Cabinet
- I. Jack C. Thurman v. Personnel Cabinet
- J. Linda Thurman v. Personnel Cabinet
- K. Dana Weller v. Education Cabinet
- L. Daniel Wilson v. Department Fish and Wildlife Resources
- M. Araceli Torres v. Personnel Cabinet

11. SETTLEMENTS

Ms. Gibson moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Mr. Andrews seconded and the motion carried 5-0.

- A. Angela Burden v. Cabinet for Health and Family Services
- B. Mary Beth Farmer v. Health and Family Services
- C. Selena Kinney v. Department of Veterans Affairs
- D. Mark Ritter v. Environmental and Public Protection Cabinet

12. OTHER

- A. Powell County Investigation Supplemental Report and Recommendation
--Response from Ann Aukerman – **Adopted by the Board.**
- B. Follow-up on changes to statutes and regulations

1. KRS 18A. Mr. Crocker handed out the housekeeping and substantive statutes for the Board's review and approval. Mr. Frazer stated that since he has not been through the process before he wanted to know what the next step would be. Mr. Crocker stated that the next step is that the Personnel Board appears before the Interim Joint Committee on State Government which is scheduled for November 20, 2007 at 1:00 p.m. to answer questions. Mr. Crocker stated that the proposed changes are not controversial and he hopes that at least the housekeeping changes might pass.

Chairman Higgins asked if these were the changes agreed on by the members at the Special Meeting and if they needed to be approved. Mr. Crocker stated that was the case, except for the definition of "agency" had been left out. However, Chairman Higgins stated that there is no definition for agency. Mr. Crocker further stated that there is also a request to increase the Board Members' per diem, which has also been kept separate. Chairman Higgins asked the Board members if they were satisfied with the changes.

Ms. Gibson made a motion to adopt the proposed changes. Mr. Andrews seconded and the motion carried 6-0, with Chairman Higgins voting.

- 2. Written Reprimands [101 KAR 1:335]

Mr. Crocker advised that the Board is still waiting on a decision regarding *Pamela Perkins v. Health and Family Services* (2007-SC-518) which is at the Supreme Court for discretionary review.

After some discussion, Mr. Andrews made a motion to adopt the proposed regulation and that it be made a part of the Employee Actions section. Ms. Gibson seconded and the motion carried 6-0, with Chairman Higgins voting.

3. Education Assistance Program - New [101 KAR 2:220]

Mr. Sipek stated that this was deferred from the October 2007 Board Meeting so that the Board could hear from Dr. Penny Armstrong. Although Mr. Frazer stated he does not understand why the term “public university” could not be used in this regulation, but that it was not “overly burdensome” to request an exception.

Mr. Frazer made a motion to adopt the proposed regulation. Mr. Andrews seconded and the motion carried 6-0, with Chairman Higgins voting.

Upon conclusion of the meeting, Chairman Higgins thanked Ms. Perkins and Mr. Crocker for their hard work on the proposed legislation provisions.

There being no further business, Mr. Frazer moved to adjourn. Ms. Hendricks seconded, and the motion carried 5-0. (1:45 p.m.)

Greg Higgins, Chairman

Christine J. Goodmann, Vice-Chairman

Betty Gibson, Member

Lisa T. Hendricks, Member

Rosemary F. Center, Member

Jackson M. Andrews, Member

Robert B. Frazer, Member